No. 85-1517

In the Supreme Court of the United States

OCTOBER TERM, 1986

STATE OF COLORADO, PETITIONER

v.

JOHN LEROY SPRING

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF COLORADO

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

CHARLES FRIED
Solicitor General

STEPHEN S. TROTT
Assistant Attorney General

WILLIAM C. BRYSON
Deputy Solicitor General

ANDREW J. PINCUS
Assistant to the Solicitor General

Department of Justice
Washington, D.C. 20530
(202) 633-2217

QUESTION PRESENTED

Whether respondent's voluntary statements should be suppressed under *Miranda* v. *Arizona*, 384 U.S. 436 (1966), on the ground that the law enforcement officers' failure to identify in advance the crimes that would be the subjects of the interrogation rendered respondent's waiver of his *Miranda* rights ineffective.

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INTEREST OF THE UNITED STATES

The issue in this case is whether respondent's waiver of his rights under *Miranda* v. *Arizona*, 384 U.S. 436 (1966), was invalid because the law enforcement officers did not inform respondent of the crimes that would be the subjects of the proposed interrogation. The Court's analysis and resolution of the question whether police must provide this information in addition to the warnings prescribed in *Miranda* is likely to have an effect upon the conduct of interrogations by federal law enforcement officers

and the admission of voluntary statements in federal criminal prosecutions.

STATEMENT

1. In February 1979, Harold N. Wachtor, III, a law enforcement officer employed by the Bureau of Alcohol, Tobacco and Firearms of the United States Department of the Treasury, learned that respondent and several other persons were involved in a scheme to steal firearms and resell them in another state. Agent Wachtor recruited George Dennison, one of the members of the group, as a government informant. In addition to revealing the details of the firearms scheme, Dennison told Wachtor that respondent once admitted killing a man during a hunting trip in Colorado. Pet. App. 2A, 7C; Supp. Tr. 7-10, 31, 40.[1]

Dennison subsequently reported to Wachtor that respondent had obtained some firearms and was looking for a buyer. Pursuant to Wachtor's instructions, Dennison arranged a meeting between respondent and undercover ATF agents that was held on March 30, 1979.[2] The agents reached an agreement with respondent for the purchase of the firearms; respondent and one of his confederates were arrested as they transferred the firearms to the undercover agents' automobile. Respondent was found to be in possession of a .22 caliber pistol at the time of his arrest. Pet. App. 1A-2A, 7C; Supp. Tr. 9-11, 18.

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[1] "Supp. Tr." refers to the transcript of the suppression hearing conducted on March 17, 1980; "Tr." refers to the trial transcript.

[2] In the course of a telephone conversation with Dennison concerning the sale of the firearms, respondent implicated himself in the hunting trip murder. That conversation was tape-recorded by ATF agents. Pet. App. 8C.

One of the ATF agents read the *Miranda* warnings to respondent just after respondent was placed under arrest. Later that day, at the ATF office, respondent again was advised of his *Miranda* rights by ATF Agents Patterson and Sadowski. He agreed to answer the agents' questions and executed a written form acknowledging and waiving his rights. Pet. App. 3A, 8C; Supp. Tr. 14-16, 20, 66-67. The agents first interrogated respondent about the firearms transactions. They then inquired whether respondent had a criminal record; respondent stated that he had a juvenile record involving the shooting of his aunt. Agent Patterson asked respondent whether he had ever shot anyone else. Pet. App. 3A, 8C-9C; Supp. Tr. 69, 74-77. Respondent "kind of ducked his head and mumbled 'I shot another guy once.'" Supp. Tr. 69; see also Pet. App. 3A, 9C. Respondent stated in response to subsequent questions that he had never been to Colorado and that he had not killed Donald Walker—the victim of the hunting trip shooting. Pet. App. 3A, 9C; Supp. Tr. 69.

On May 26, 1979, while he was in custody on charges growing out of the firearm sales scheme, respondent was interviewed by Colorado law enforcement officers concerning the murder of Donald Walker. Prior to the commencement of the questioning, respondent was advised of his *Miranda* rights, and he executed a written acknowledgment and waiver of those rights. Respondent admitted that he had accompanied Walker and Donald Wagner on a deer hunt, that he held the flashlight while Wagner shot Walker, that either respondent or Wagner emptied Walker's pockets, that respondent aided Walker in disposing of the body, and that respondent later lied about Walker's whereabouts. Respondent subse-

quently signed a written statement prepared by one of the officers, which summarized the interview. Pet. App. 4A-5A, 17C-18C; Supp. Tr. 80-90, 98-103.[3]

[3] Approximately six weeks later, after respondent entered his guilty plea to the federal firearms offenses and an information charging him with murder had been issued in Colorado, respondent again was interviewed by the ATF agents. At that interview, on July 13, 1979, the agents administered the *Miranda* warnings and respondent indicated that he understood his rights. Respondent stated that he would not sign any forms without the advice of his lawyer, but he agreed to answer the agents' questions. Respondent answered a number of inquiries concerning the location of a variety of firearms and explosives. The questioning then turned to the Walker murder. In response to several questions, respondent said, "I'd rather not talk about that," but he then admitted that he had been in Colorado with Walker at the time of the murder and that the gun in his possession at the time of his arrest previously had belonged to Walker. Respondent agreed that "[he], Wagner and Walker went out together and that only [he] and Wagner came back alive." Pet. App. 5A-6A, 19C-20C; Supp. Tr. 22-28, 32-35, 70-73.

The trial court found that these statements were admissible (Pet. App. 6A-7A), but the Colorado intermediate appellate court disagreed, holding that respondent had "invoke[d] his right to silence as to the homicide" when he at first declined to answer questions relating to that subject (*id.* at 4B). The Colorado Supreme Court unanimously concluded that the statements should be suppressed because the agents did not make "any effort to reaffirm [respondent's] decision to waive his constitutional rights after he declined to answer particular questions" and failed to ascertain whether respondent intended to exercise his privilege against compelled self-incrimination with respect to all questions relating to the Walker murder. *Id.* at 23C-24C; see also *id.* at 35C. This Court limited its grant of certiorari to the first question presented in the petition, and thereby expressly declined to review the state court's determination with respect to this issue. Accordingly, no question regarding the admissibility of the July 13 statements is presented in this case.

2. Respondent was charged with first degree murder in connection with the death of Donald Walker. Prior to trial, respondent moved to suppress the statements he made in the interviews on the ground that he had not effectively waived his *Miranda* rights. The trial court denied respondent's motion (Pet. App. 1A-9A). With respect to the March 30 interview, the court found (*id.* at 3A) that

> this questioning was conducted while [respondent] was in lawful custody, pursuant to a valid arrest; that [respondent] had been properly advised of his rights and was aware of his right to remain silent, to have Counsel present during interrogation, to stop the interrogation at any time; and that his responses to the interrogation were made freely, voluntarily and intelligently: that there was no element of duress or coercion used to induce [respondent's] statements * * *.

The court noted that respondent was not specifically advised that the questioning would touch upon the Colorado murder, but it found that "the questions themselves suggested the topic of inquiry. * * * [They] were not designed to gather information relating to a subject that was not readily evident or apparent to [respondent]" (*id.* at 4A).

The trial court also concluded that respondent's statements during the May 26 interview were admissible. The court observed that respondent was advised of his rights, executed a waiver form, did not decline to answer any questions, and signed a written statement summarizing the interview. The court concluded that the statement "was made freely, and intelligently, after [respondent was] properly and fully advised of his rights." Pet. App. 4A-5A.

Respondent was found guilty of first degree murder, and he appealed to the Colorado intermediate appellate court. That court reversed respondent's conviction by a divided vote, holding that respondent's statements had been admitted into evidence in violation of this Court's decision in *Miranda* v. *Arizona*, *supra* (Pet. App. 1B-7B). The court stated that "[a]n advisement of the privilege against self-incrimination and of [the] right to counsel is sufficient if the accused fully knows the general nature of the crime involved. If knowledge of the crime is withheld, a suspect cannot intelligently make the decision as to whether he wants counsel" (*id.* at 3B (citation omitted)). Since the agents did not advise respondent that the questioning in the March 30 interview would relate to the Colorado murder, the court concluded that "any waiver of rights in regard to questions designed to elicit information about [the murder] was not given knowingly or intelligently" (*ibid.*). None of respondent's March 30 statements had been introduced at trial, but the appellate court did not note that fact.[4] It concluded that the reversal of respondent's conviction was required because respondent's March 30 *Miranda* waiver was invalid (Pet. App. 3B).

The court stated that the May 26 statement was not admissible because it was a "fruit" of respondent's March 30 statements. The May 26 statement had to be suppressed, the court concluded, because the State had failed to show that "the [May 26]

[4] The trial court had ruled that respondent's statement that he "shot another guy once" was not relevant (Tr. 578-579); the prosecution chose not to offer respondent's statement denying that he had committed the Walker murder.

statement was not the product of [respondent's] prior incriminating statements" (Pet. App. 4B).

One judge dissented. He concluded that at the time of the March 30 interview respondent was "fully aware that his activities surrounding the possession and sale of stolen firearms were the basis for his arrest and the agents' investigation" (Pet. App. 6B). Because the .22 pistol found on respondent was the weapon that had been taken from Walker at the time of his death, the dissenting judge concluded that questions regarding the source and the use of the pistol were foreseeable, and that respondent's *Miranda* waiver on March 30 was therefore valid and proper. The dissenting judge further concluded that respondent's May 26 *Miranda* waiver was valid as well (Pet. App. 6B-7B).

3. The Supreme Court of Colorado affirmed by a divided vote (Pet. App. 1C-35C). Observing that "[i]t seems likely that a suspect's decision whether to consult with an attorney will often be influenced by the seriousness of the matter underlying the interrogation" (*id.* at 12C), the majority stated that "[o]ne factor often considered crucial to a court's determination as to the validity of a waiver * * * is the extent of the suspect's knowledge concerning the likely subjects and scope of the prospective questioning" (*id.* at 13C). The court concluded that "an examination of the totality of the circumstances is proper and necessary to determine, among other things, the extent of the suspect's awareness of the subject matter of the investigation and the impact of this awareness, or lack of awareness, on the suspect's decision to waive his constitutional rights" (*ibid.*).

The court found that, in the present case, "the absence of an advisement to [respondent] that he would

be questioned about the Colorado homicide, and the lack of any basis to conclude that at the time of the execution of the waiver, he reasonably could have expected that the interrogation would extend to that subject, *are* determinative factors in undermining the validity of the waiver" (Pet. App. 15C (emphasis in original)). The court therefore concluded that respondent did not make a "voluntary, knowing and intelligent waiver of [his] rights" in connection with the March 30 interview (*id.* at 17C).

The court considered the admissibility of the March 30 statements to be relevant because the court believed that its finding of a violation of *Miranda* on March 30 might require the suppression of respondent's May 26 statement. Pet. App. 10C-11C. The court held that the May 26 statement would be inadmissible if it was "the direct fruit of the March 30 statement" (*id.* at 19C), and it directed the trial court to resolve that issue on remand.[5]

Two justices dissented. They noted that respondent had been advised of his rights as required by *Miranda* and had indicated that he understood those rights. The dissenting justices stated that "a waiver of *Miranda* rights should never be held invalid simply because the suspect is not informed or does not know in advance of all matters that are under investigation and will be the subject of interrogation" (Pet. App. 33C).

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[5] The Colorado Supreme Court also left for consideration on remand the State's argument that the May 26 statement was admissible under *Oregon* v. *Elstad*, No. 83-773 (Mar. 4, 1985), regardless of the admissibility of the March statements (see Pet. App. 19C, 30C n.6).

SUMMARY OF ARGUMENT

In *Miranda* v. *Arizona*, 384 U.S. 436 (1966), this Court prescribed a set of "procedural safeguards" designed to protect persons suspected of criminal wrongdoing from what the Court viewed as the inherent compulsion of custodial interrogation, and thereby to enable such persons freely to exercise their privilege against compelled self-incrimination. *Miranda* did not prohibit all custodial interrogation; on the contrary, it established a specific procedure by which a suspect could waive his privilege and agree to answer questions posed by the police.

The law enforcement officers in the present case followed with precision the procedures set forth by this Court in *Miranda*. They recited the *Miranda* warnings, ensured that respondent understood his rights, and obtained from respondent a written waiver of those rights. The court below, however, treated the officers' compliance with *Miranda* as the beginning rather than the end of its inquiry. The court concluded that respondent's waiver was invalid because he had not been supplied with a supplement to the *Miranda* warnings—a description of the criminal activity that was to be the subject of the proposed interrogation. This Court's recent decisions in *Moran* v. *Burbine*, No. 84-1485 (Mar. 10, 1986), and *Oregon* v. *Elstad*, No. 83-733 (Mar. 4, 1985), conclusively demonstrate that the Colorado Supreme Court erred by requiring the police to provide respondent with information other than that contained in the *Miranda* warnings.

The first inquiry in evaluating the validity of a *Miranda* waiver is whether the suspect acted "with a full awareness both of the nature of the right being abandoned and the consequences of the decision to

abandon it" (*Moran*, slip op. 7). This test plainly is satisfied as long as the suspect is supplied with the information contained in the *Miranda* warnings. The warnings inform the suspect of his right to remain silent and caution him that any statement he makes can be used against him; a suspect who is aware of the information contained in the warnings thus possesses all the information necessary for an effective waiver.

The Colorado Supreme Court concluded that a suspect also should be told of the subject matter of the interrogation because that information might influence the suspect's decision whether to waive his right to remain silent. But this Court repeatedly has held that *Miranda*'s sole purpose is to ensure the voluntariness of a suspect's decision to speak or remain silent; it is not a guarantee that the suspect's decision will comport with his informed self-interest. Law enforcement officers therefore are not required to provide a suspect with any and all information that he might find helpful in deciding whether to speak or remain silent.

Such a novel rule would upset the balance that this Court has struck between the competing interests implicated in custodial interrogation. The rule would not further the Fifth Amendment interests protected by *Miranda*, because the additional information is not necessary to enable a suspect to exercise his privilege against compelled self-incrimination. Yet the rule would discourage voluntary confessions and thereby undermine society's compelling interest in apprehending and convicting persons who have engaged in criminal activity. Moreover, the principle applied by the court below would greatly reduce the clarity of *Miranda*'s waiver procedures and, as a result, increase the difficulties facing police officers charged with administering the *Miranda* rule.

Respondent's waiver also satisfied the second requirement for an effective *Miranda* waiver because it was "voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion or deception" (*Moran*, slip op. 7). No physical or psychological pressure was applied to obtain the waiver. In addition, because the law enforcement officers did not deceive respondent with respect to the information conveyed in the *Miranda* warnings, but simply withheld information that *Miranda* did not require them to provide, the waiver was not the product of impermissible police deception. For these reasons, respondent's waiver of his *Miranda* rights should be upheld.

ARGUMENT

RESPONDENT'S VOLUNTARY STATEMENTS SHOULD NOT BE SUPPRESSED

In *Miranda* v. *Arizona*, 384 U.S. 436 (1966), this Court concluded that custodial interrogation by law enforcement officers generates "pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely" (384 U.S. at 467). "To combat this inherent compulsion, and thereby protect the Fifth Amendment privilege against self incrimination, *Miranda* imposed on the police an obligation to follow certain procedures in their dealings with the accused" (*Moran* v. *Burbine*, No. 85-1485 (Mar. 10, 1986), slip op. 6). The Court held that, prior to any questioning of a suspect, a law enforcement officer must inform the suspect "that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed" (*Miranda*, 384 U.S. at 444).

Miranda further provided that a suspect may waive his right to remain silent and agree to submit to questioning by law enforcement officers "provided the waiver is made voluntarily, knowingly and intelligently." 384 U.S. at 444; see also *id.* at 468-470. A waiver is valid if it is the product of "a free and deliberate choice," and if it is made "with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it." *Moran* v. *Burbine*, slip op. 7; see also *Fare* v. *Michael C.*, 442 U.S. 707, 725 (1979); *North Carolina* v. *Butler*, 441 U.S. 369, 374-375 (1979).

The question in this case is whether respondent effectively waived his *Miranda* rights in connection with the March 30 interview conducted by the ATF agents.[6] In our view, respondent's *Miranda* waiver plainly was valid. The agents administered the warnings required by *Miranda*, respondent indicated that

[6] Although none of the statements made by respondent during the March 30 interview were admitted at trial, the validity of the waiver is relevant because the Colorado Supreme Court indicated that respondent's May 26 statement might be suppressed on the ground that it was a "fruit" of the March 30 statement. The Colorado Supreme Court directed the trial court to determine the relationship between the two statements on remand. Pet. App. 18C-19C. Since the May 26 statement would not be subject to suppression if the March 30 statements were not obtained in violation of *Miranda*, a finding that respondent's March 30 waiver was valid would eliminate any question regarding the admissibility of the May 26 statement.

Even if the March 30 statements were obtained in violation of *Miranda*, however, the May 26 statement almost certainly would be admissible under this Court's decision in *Oregon* v. *Elstad*, No. 83-773 (Mar. 4, 1985). The Colorado Supreme Court left the *Elstad* issue to be resolved on remand (Pet. App. 19C, 30C n.6).

he understood the information conveyed in the warnings, and respondent voluntarily agreed to waive his right to remain silent and to answer the agents' questions. *Miranda* and its progeny make clear that this simple procedure is all that is required to obtain an effective waiver.

A. The Law Enforcement Officers' Administration Of The *Miranda* Warnings Supplied Respondent With All The Information He Needed To Make A Knowing *Miranda* Waiver

Prior to the March 30 interrogation, respondent twice was informed by law enforcement officers that he had a right to remain silent, that any statement he made could be used against him, and that he had a right to request a lawyer (Pet. App. 5A, 8C). The Colorado Supreme Court concluded that respondent's waiver nonetheless was ineffective because he was not informed in advance of all the subjects that would be covered in the proposed interrogation. It is well settled, however, that a police officer may obtain a valid waiver simply by conveying to a suspect the information contained in the *Miranda* warnings themselves; no additional information is required. The officers' precise compliance with *Miranda* in this case therefore was sufficient to supply respondent with the information necessary for an effective waiver.[7]

[7] This Court stated in *Moran* that a suspect must be "aware[]" of his rights in order to execute a valid waiver (slip op. 7). Thus, a *Miranda* waiver will not be effective if the suspect fails to comprehend the information contained in the warnings. This question must be evaluated by considering "the [suspect's] age, experience, education, background, and intelligence" (*Fare* v. *Michael C.*, 442 U.S. at 725). Nothing in the record in this case indicates that respondent failed to understand the information conveyed by the warnings.

1. This Court steadfastly has adhered to the view that the warnings prescribed by *Miranda* provide a suspect with all the information that he needs to decide whether to waive his rights. The *Miranda* Court itself noted that advising a suspect that his statements can be used against him will "make [the suspect] aware not only of the privilege, but also of the consequences of forgoing it" (384 U.S. at 469). Nowhere in the Court's comprehensive discussion of the warnings (*id.* at 467-474) is there even a hint that the police would be required to append ad hoc supplements to the warnings depending on the facts of each particular case.

Only last Term, this Court expressly reaffirmed that the warnings convey to a suspect all the information necessary for an effective *Miranda* waiver, stating that "[o]nce it is determined that a suspect's decision not to rely on his rights was uncoerced, that he at all times knew he could stand mute and request a lawyer, and that he was aware of the state's intention to use his statements to secure a conviction, the analysis is complete and the waiver is valid as a matter of law." *Moran*, slip op. 8; see also *Fare* v. *Michael C.*, 442 U.S. at 718; *Michigan* v. *Mosley*, 423 U.S. 96, 99-100 (1975); *Michigan* v. *Tucker*, 417 U.S. 433, 443-444 (1974); cf. *Oregon* v. *Elstad*, No. 83-773 (Mar. 4, 1985), slip op. 12 ("[t]he warning conveys the relevant information and thereafter the suspect's choice whether to exercise his privilege to remain silent should ordinarily be viewed as an 'act of free will' ").

The conclusion that the warnings supply a suspect with all the information that is relevant under *Miranda* is a direct corollary of the principle upon which *Miranda* is based. The sole purpose of the warnings and other procedures mandated by *Miranda* is to

counteract the compulsion to speak that a suspect might feel as a result of custodial interrogation, thereby protecting the suspect's privilege against compelled self-incrimination. *Moran*, slip op. 6, 10-11; *Miranda*, 384 U.S. at 467. By reminding the suspect that he is entitled to refrain from speaking, and that if he chooses to answer questions he may provide information that can be used against him, the warnings fully counteract any such compulsion to speak. As this Court has recognized, "[i]t is inconceivable that [the *Miranda*] warning would fail to alert [a defendant] to his right to refuse to answer any question which might incriminate him. * * * Indeed, it seems self-evident that one who is told he is free to refuse to answer questions is in a curious posture to later complain that his answers were compelled." *United States* v. *Washington*, 431 U.S. 181, 188 (1977); see also *Moran*, slip op. 13 ("as *Miranda* holds, full comprehension of the rights to remain silent and request an attorney are sufficient to dispel whatever coercion is inherent in the interrogation process").

Respondent's waiver plainly satisfies this standard. The officers' recitation of the *Miranda* warnings expressly reminded respondent that he had a right to remain silent and that his statements could be used against him. The warnings thus fully informed respondent of the existence of his Fifth Amendment privilege and the consequence of abandoning that privilege.[8] Accordingly, the officers were not re-

[8] The requirement that a suspect be made "aware[] * * * of * * * the consequences of the decision to abandon [the privilege]" in order effectively to waive his right to remain silent (*Moran*, slip op. 7) does not justify a rule requiring the police to advise the suspect of the particular criminal activity that they are investigating. It could be argued that informing the

quired to provide respondent with information about the subject matter of the proposed interrogation in order to accomplish that goal.[9]

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suspect of the topics of the interrogation would in some general sense provide the suspect with information about the consequences of waiving his rights—he would learn the particular criminal activity in which he might implicate himself. However, the sole consequence of which a suspect must be informed for purposes of *Miranda* is that his statements can be used against him. Once he is aware of that fact, he understands "the consequences of forgoing [the privilege]." *Miranda*, 384 U.S. at 469; see also *Moran*, slip op. at 8, 9-10.

[9] The lower courts that have concluded that a suspect's knowledge of the subjects of the interrogation is relevant in assessing the validity of his *Miranda* waiver have formulated essentially two different standards. Some courts impose an obligation upon the police to provide this information, holding that the police must inform the suspect of the subject of the interrogation in every case. See, *e.g.*, *Schenk* v. *Ellsworth*, 293 F. Supp. 26, 29 (D. Mont. 1968). Other courts, including the court below (see Pet. App. 13C-17C), have cast the requirement in terms of the suspect's knowledge, holding that the suspect's awareness of the subject matter of the proposed interrogation must be considered in assessing the validity of the suspect's waiver. On this view, the police are not obligated to supplement the *Miranda* warnings as long as the suspect could have ascertained the subjects of the interrogation from his knowledge of the surrounding circumstances. See, *e.g.*, *Carter* v. *Garrison*, 656 F.2d 68, 70 (4th Cir. 1981), cert. denied, 455 U.S. 952 (1982); *United States* v. *McCrary*, 643 F.2d 323, 328-329 (5th Cir. 1981); see also *Collins* v. *Brierly*, 492 F.2d 735, 739 (3d Cir.) (en banc), cert. denied, 419 U.S. 877 (1974). Although the rules applied by these courts differ in their particulars, they rest upon the same basic legal conclusion—that the suspect's awareness of the subject of the interrogation is in some way relevant in assessing the validity of his *Miranda* waiver. For the reasons discussed in the text, this conclusion is incorrect.

Other courts have held that the validity of a suspect's waiver is unaffected by the suspect's lack of knowledge about the subjects of the proposed interrogation. See, *e.g.*, *United States* v. *Burger*, 728 F.2d 140, 141 (2d Cir. 1984); *United States* v. *Anderson*, 533 F.2d 1210, 1212 n.3 (D.C. Cir. 1976); *United States* v. *Campbell*, 431 F.2d 97, 99 n.1 (9th Cir. 1970). Courts also have rejected arguments that the *Miranda* warnings should be supplemented with other categories of information. See, *e.g.*, *United States* v. *Contreras*, 667 F.2d 976, 979 (11th Cir.), cert. denied, 459 U.S. 849 (1982); *Harris* v. *Riddle*, 551 F.2d 936, 938-939 (4th Cir.), cert. denied, 434 U.S. 849 (1977); *United States ex rel. Placek* v. *Illinois*, 546 F.2d 1298, 1300 (7th Cir. 1976); *United States* v. *Hall*, 396 F.2d 841, 845-846 (4th Cir.), cert. denied, 393 U.S. 918 (1968).

The only possible reason for requiring the police to provide a suspect with this additional information is the justification advanced by the Colorado Supreme Court—that "a suspect's decision whether to consult with an attorney before answering questions will often be influenced by the seriousness of the matter underlying the interrogation" (Pet. App. 12C). However, just as this Court has made clear that the *Miranda* warnings convey to a suspect all the information needed for a valid waiver, the Court consistently has refused to require supplementation of the warnings on the ground that the additional information might be considered useful by a suspect in calculating whether it is in his self-interest to waive his rights. *Miranda* requires only that the suspect be made aware that he is free to choose between speaking and remaining silent; it is not concerned with the wisdom of that choice. Accordingly, the suspect must be supplied with information only when that information is necessary to make the suspect aware of his right to choose to remain silent.

In *Oregon* v. *Elstad*, *supra*, for example, the Court rejected the defendant's claim that his *Miranda*

waiver was not fully informed because he had not received an additional warning telling him that his previous confession was inadmissible. The defendant asserted that the additional information might have affected his decision whether to assert his right to remain silent. The Court stated that an additional warning was "neither practicable nor constitutionally necessary," and noted that it had "never embraced the theory that a defendant's ignorance of the full consequences of his decisions vitiates their voluntariness" (*Oregon* v. *Elstad*, slip op. 17).

The Court reached the same result in *Moran* v. *Burbine*, *supra*, holding that a suspect need not be informed of the fact that an attorney had telephoned the police station to inquire about his case. It stated: "No doubt the additional information would have been useful to [the defendant]; perhaps even it might have affected his decision to confess. But we have never read the Constitution to require that the police supply a suspect with a flow of information to help him calibrate his self interest in deciding whether to speak or stand by his rights" (slip op. 8).

This Court's decisions in *Elstad* and *Moran* compel the rejection of the Colorado Supreme Court's conclusion that a suspect must be aware of the subjects of the proposed interrogation in order effectively to waive his *Miranda* rights. An additional warning cannot be mandated on the ground that the information would be useful to the suspect because, as this Court has made clear, "*Miranda* [does not] require[] the police to inform a suspect of any and all information that would be useful to a decision whether to remain silent or speak with the police" (*Moran*, slip op. 18 n.4). Whether a suspect possesses such information accordingly is irrelevant in assessing the validity of his *Miranda* waiver.

The Court's decision in *United States* v. *Washington*, *supra*, provides additional support for this conclusion. The defendant in *Washington* received the *Miranda* warnings prior to testifying before a grand jury, but he argued that he also should have been told that he was a potential defendant. The Court rejected the claim that the *Miranda* warnings were inadequate to protect the defendant's Fifth Amendment privilege. It observed that "[e]ven in the presumed psychologically coercive atmosphere of police custodial interrogation, *Miranda* does not require that any additional warnings be given simply because the suspect is a potential defendant" (431 U.S. at 188). Since a suspect need not be provided with this information—which, like information about the topics of the interrogation, might inform him of the severity of his situation and thereby assist him in determining whether to assert his right to remain silent—the agents in this case were not required to supply respondent with any additional information in order to obtain a valid *Miranda* waiver.

2. Expanding the scope of the *Miranda* warnings to require that a suspect be informed in advance of the possible subjects of the interrogation is unwarranted for the additional reason that such a requirement would dramatically alter the balance struck by this Court in *Miranda* with respect to the constitutional constraints upon custodial interrogation. The Court has recognized that "[c]ustodial interrogations implicate two competing concerns" (*Moran*, slip op. 12). First, " 'the need for police questioning as a tool for effective enforcement of criminal laws' cannot be doubted. Admissions of guilt are more than merely 'desirable'; they are essential to society's compelling interest in finding, convicting and punishing those

who violate the law." *Ibid.* (citations omitted); see also *Oregon* v. *Elstad*, slip op. 6; *United States* v. *Washington*, 431 U.S. at 186-187; *Schneckloth* v. *Bustamonte*, 412 U.S. 218, 225 (1973). Second, the Court has concluded that "the interrogation process is 'inherently coercive' and that, as a consequence, there exists a substantial risk that the police will inadvertently traverse the fine line between legitimate efforts to elicit admissions and constitutionally impermissible compulsion" (*Moran*, slip op. 12).

The Court reconciled these interests in *Miranda* by holding that "[p]olice questioning * * * could continue in its traditional form, * * * but only if the suspect clearly understood that, at any time, he could bring the proceeding to a halt or, short of that, call in an attorney to give advice and monitor the conduct of his interrogators" (*Moran*, slip op. 12). By requiring police officers to inform a suspect about the subject matter of the interrogation solely because that information is relevant to a suspect's calculation of his own self-interest in waiving or standing on his privilege, the rule adopted by the court below would "upset this [Court's] carefully drawn approach in a manner that is both unnecessary for the protection of the Fifth Amendment privilege and injurious to legitimate law enforcement" (*Moran*, slip op. 12-13).

Moreover, the rationale underlying such a rule would be virtually limitless—extending to any information possessed by police officers that might be relevant to the suspect's calculation of his self-interest. For example, the suspect's decision to waive his rights and consent to interrogation probably would be affected by the quality and quantity of information already possessed by the police concerning the suspect's involvement in the offense under investi-

gation, the legal elements of the offense, the likely penalties for the crime of which he is suspected, and the prosecutor's or judge's propensity to treat more leniently one who has cooperated in the investigation. In addition, police officers surely are aware that "any lawyer worth his salt will tell the suspect in no uncertain terms to make no statement to police under any circumstances" (*Watts* v. *Indiana*, 338 U.S. 49, 59 (1949) (Jackson, J., concurring in the judgment)), and that fact also would most likely influence a suspect's decision. Under the test applied by the court below, the police could be burdened with the requirement of supplying suspects with all this information despite the fact that the information is irrelevant to the purpose of *Miranda*—to eliminate the compulsion presumed to be inherent in custodial interrogation and enable a suspect freely to decide whether to exercise his right to remain silent.

3. Finally, practical considerations counsel against the rule applied by the Colorado Supreme Court. This Court has emphasized "on numerous occasions, [that] '[o]ne of the principal advantages' of *Miranda* is the ease and clarity of its application." *Moran*, slip op. 11; see also *Berkemer* v. *McCarty*, 468 U.S. 420, 430-432 (1984); *New York* v. *Quarles*, 467 U.S. 649, 663 (1984) (O'Connor, J., concurring in the judgment in part and dissenting in part); *Fare* v. *Michael C.*, 442 U.S. at 718 ("*Miranda*'s holding has the virtue of informing police and prosecutors with specificity as to what they may do in conducting custodial interrogation, and of informing courts under what circumstances statements obtained during such interrogation are not admissible").

The adoption by this Court of the Colorado Supreme Court's decision "would have the inevitable conse-

quence of muddying *Miranda*'s otherwise relatively clear waters" (*Moran*, slip op. 11). For example, would the police be required to inform a suspect of the conduct that is under investigation (*e.g.*, "a killing") or would they be required to list for the suspect each of the actual charges that might possibly be brought? A police officer's suspicion with regard to a particular offense could change in the course of an interrogation as the suspect revealed new information. Would the officer be required to interrupt his questioning to advise the suspect that he now was under suspicion for an additional offense? In addition, as the dissenting justices on the Colorado Supreme Court observed (Pet. App. 34C), "[p]rior to questioning a suspect, the police may have insufficient information to determine what charges will ultimately be filed against him. The nature of the offense may depend upon circumstances unknown to the police, such as whether the suspect has a criminal record. It may also turn upon an event yet to occur, such as whether the victim of the crime dies."

The uncertainty generated by the Colorado court's rule would not necessarily be confined to advising a suspect of the criminal activity that would be the subject of the interrogation. As we have discussed (see pages 20-21, *supra*), the principle embraced by the Colorado Supreme Court could be applied to require police officers to provide suspects with a range of other information that might be viewed as relevant to a suspect's calculation of his self-interest in deciding whether to waive his rights. A careful police officer therefore could no longer be sure that administration of the *Miranda* warnings would provide the predicate for a valid waiver. Instead, he would have to examine the facts of each case to determine whether

a court might later conclude that some piece of information would have been relevant to the suspect's decision. And a miscalculation in either direction could prove costly: if he erred in failing to supply the information, any confession he obtained would have to be suppressed; if he erred on the side of caution, his action could needlessly discourage the making of a statement and thwart successful investigation of a serious crime.

B. Respondent's Waiver Of His *Miranda* Rights Was Voluntary

The second aspect of the *Miranda* waiver inquiry is whether "the relinquishment of the right [was] voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion or deception" (*Moran*, slip op. 7). The question is whether the waiver was the product of an "uncoerced choice" by the suspect (*ibid.*).

Nothing in the record in this case indicates that respondent's waiver was the result of physical or psychological pressure. The trial court found that "there was no element of duress or coercion used to induce [respondent's] statements on March 30, 1979" (Pet. App. 3A), and neither of the two state appellate courts questioned that determination. Respondent's waiver therefore was clearly voluntary. Cf. *Moran*, slip op. 7.[10]

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[10] Some courts have suggested that a waiver may not be "voluntary" if the suspect is not aware of the subjects of the proposed interrogation. See, *e.g.*, *Collins* v. *Brierly*, 492 F.2d at 739. However, the limitations upon a police officer's obligation to provide information to a suspect cannot be circumvented by the use of the "voluntariness" label; a waiver is not rendered involuntary by a police officer's failure to provide

Respondent intimates (Br. in Opp. 6) that his waiver was the product of a "deliberate intent to mislead [respondent] about the subject matter of the interrogation." In our view, nothing in the record supports the conclusion that the agents withheld information about the topics of the proposed interrogation as part of a deliberate effort to mislead respondent into waiving his Fifth Amendment privilege. Even if respondent were correct, however, that fact would not vitiate his *Miranda* waiver.

Miranda provides that "any evidence that the accused was threatened, tricked, or cajoled into a waiver will, of course, show that the defendant did not voluntarily waive his privilege" (384 U.S. at 476). The Court similarly observed in *Moran* that a waiver that is "the product of * * * intimidation, coercion or deception" is involuntary (slip op. 7). The context of each of these references to deception and trickery indicates that deception can render a *Miranda* waiver involuntary only when the deception amounts to the equivalent of coercion, precluding the suspect from making a free choice between waiving and standing on his rights. As we have discussed, that plainly was not the case here.

Police deception also would invalidate a waiver if it "deprive[d] a defendant of knowledge essential to his ability to understand the nature of his rights and the consequences of abandoning them" (*Moran*, slip op. 9). Thus, when the deception relates to the nature of the rights discussed in the warnings—if, for example, an officer tells a suspect that the suspect's

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a suspect with information that *Miranda* does not require the officer to convey. See page 25, *infra*. The voluntariness inquiry looks not to the extent of the suspect's knowledge, but to whether his choice was the product of coercion.

statement actually cannot be used against him—any resulting waiver would be invalid.

However, when the deception concerns facts extraneous to the information conveyed in the warnings—and does not amount to the equivalent of coercion—the deception cannot invalidate the suspect's waiver. In *Moran*, for example, the Court concluded that even if the police officers deliberately withheld from the defendant the fact that the defendant's attorney had telephoned the police station, their conduct did not constitute "the kind of 'trick[ery]' that can vitiate the validity of a waiver" (*Moran*, slip op. 9 (citation omitted)). That is because the officers' conduct did not affect the defendant's awareness of the information necessary to understand his rights—the information conveyed in the *Miranda* warnings. See *ibid.* (" 'deliberate or reckless' withholding of information * * * is only relevant to the constitutional validity of a waiver if it deprives a defendant of knowledge essential to his ability to understand his rights and the consequences of abandoning them").

In the present case, the agents failed to supply respondent with information—the topics of the proposed interrogation—that *Miranda* did not require them to provide. The limits upon a police officer's obligation to provide information to a suspect would be meaningless if the failure to supply extraneous information could constitute deception that vitiates a suspect's waiver. Instead, because "respondent's voluntary decision to speak was made with full awareness and comprehension of all the information *Miranda* requires the police to convey, the waiver[] [was] valid" (*Moran*, slip op. 9-10).[11]

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[11] Although this case concerns a situation in which the claim of deception is based upon law enforcement officers'

For the foregoing reasons, it is clear that respondent acted with an awareness of both the nature of his privilege against compelled self-incrimination and the consequences of waiving that privilege when he voluntarily waived his *Miranda* rights prior to the March 30 interview. Respondent's waiver therefore was valid and the Colorado Supreme Court erred in concluding that *Miranda* required the suppression of respondent's voluntary statements.

Finally, to the extent that the lower court's ruling is based on due process considerations, the agents'

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failure to provide information to a suspect, the same test should apply in determining whether an affirmative misrepresentation by a law enforcement officer undermined the validity of a suspect's waiver. For example, an affirmative misrepresentation concerning the subjects of the proposed interrogation would not vitiate a suspect's waiver because it would affect only the suspect's calculation of his self-interest, and could not affect his comprehension of his right to remain silent. See, *e.g.*, *Commonwealth* v. *Forde*, 466 N.E.2d 510, 511-512 (Mass. 1984) (police officer's false statement that the defendant's fingerprints had been found on dead body did not vitiate *Miranda* waiver); *State* v. *Woods*, 117 Wis. 2d 701, 723-729, 345 N.W.2d 457, 468-471 (1984) (waiver not invalidated by police officer's misrepresentation of evidence against defendant); 1 W. LaFave & J. Israel, *Criminal Procedure* § 6.9(c), at 528-529 (1984); but see White, *Police Trickery In Inducing Confessions*, 127 U. Pa. L. Rev. 581, 611-614 (1979) (arguing that misrepresentation of the charges under investigation should invalidate a *Miranda* waiver). The basic constitutional standard governing police interrogation techniques—the Due Process Clause—already regulates the use of deception by police officers (see pages 27-28, *infra*). *Miranda* should not be read to impose additional restrictions upon the use of this interrogation technique by police officers as long as the deception does not affect the suspect's ability to understand and act upon his right to decline to answer a police officer's questions.

failure to inform respondent of the crimes that would be the subject of the interrogation plainly did not deprive respondent of the fundamental fairness guaranteed by the Due Process Clause of the Fourteenth Amendment. The agents simply failed to provide respondent with information that might have affected his calculation of whether his self-interest weighed in favor of making a voluntary statement. That conduct "falls short of the kind of misbehavior that so shocks the sensibilities of civilized society as to warrant a federal intrusion into the criminal processes of the States" (*Moran*, slip op. 19). In *United States* v. *Washington*, *supra*, the defendant—in addition to claiming a violation of *Miranda*—argued that it would be "fundamentally unfair to elicit incriminating testimony from a potential defendant without first informing him of his target status" because this additional information would "alert the witness more pointedly" and assist him in deciding whether to invoke his privilege against compelled self-incrimination (431 U.S. at 190 n.6). The Court held that "[t]his line of argument simply restates respondent's claims under the Self-Incrimination Clause and is rejected for the same reasons," noting that there had been no showing of "any governmental misconduct which undermined the fairness of the proceedings" (*ibid.*). The same conclusion is appropriate here.

Even if the police withheld information as part of a plan to deceive respondent, their conduct would not amount to a violation of due process. The Due Process Clause does not prohibit all uses of deception in connection with police interrogation. *Frazier* v. *Cupp*, 394 U.S. 731, 737, 739 (1969); *Miller* v. *Fenton*, No. 83-5530 (3d Cir. June 26, 1986), slip op. 19-20; 1 W. LaFave & J. Israel, *supra*, § 6.2(c), at 446-447; see

also *Spano* v. *New York*, 360 U.S. 35 (1959) (police deception combined with other factors found to constitute interrogation technique violative of due process). The inquiry is whether the statements were obtained by "'techniques and methods offensive to'" fundamental fairness, under "circumstances in which the suspect clearly had no opportunity to exercise 'a free and unconstrained will.'" *Oregon* v. *Elstad*, slip op. 5 (citation omitted); see also *Miller* v. *Fenton*, No. 84-5786 (Dec. 3, 1985), slip op. 5, 12. The trial court in this case specifically found that respondent's statements were voluntary and not the product of improper coercion (Pet. App. 3A), and there is no evidence to the contrary. Therefore, the admission of the statements into evidence is not barred by the Due Process Clause.

CONCLUSION

The judgment of the Supreme Court of Colorado should be reversed with respect to the issue on which this Court granted certiorari.

Respectfully submitted.

CHARLES FRIED
Solicitor General

STEPHEN S. TROTT
Assistant Attorney General

WILLIAM C. BRYSON
Deputy Solicitor General

ANDREW J. PINCUS
Assistant to the Solicitor General

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